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### ADVISORY OPINION NO. 18-048-E

October 5, 2018

**Question Presented:** May a sixteenth section leaseholder retain the lease if he is elected to the school board and the lease must be renewed during his term of office?

**Brief Answer:** No. If the school board takes any action to reauthorize the lease after the school board member takes office, a violation of Section 109, Miss. Const. of 1890, and Section 25-4-105(2), Miss. Code of 1972, will occur. Therefore, the candidate must choose between holding the lease and serving on the school board because he cannot do both.

The Mississippi Ethics Commission issued this opinion on the date shown above in accordance with Section 25-4-17(i), Mississippi Code of 1972, as reflected upon its minutes of even date. The Commission is empowered to interpret and opine only upon Article IV, Section 109, Mississippi Constitution of 1890, and Article 3, Chapter 4, Title 25, Mississippi Code of 1972. This opinion does not interpret or offer protection from liability for any other laws, rules or regulations. The Commission based this opinion solely on the facts and circumstances provided by the requestor as restated herein. The protection from liability provided under Section 25-4-17(i) is limited to the individual who requested this opinion and to the accuracy and completeness of these facts.

#### I. LAW

The pertinent Ethics in Government Laws to be considered here are as follows:

Section 109, Miss. Const. of 1890.

No public officer or member of the legislature shall be interested, directly or indirectly, in any contract with the state, or any district, county, city, or town

thereof, authorized by any law passed or order made by any board of which he may be or may have been a member, during the term for which he shall have been chosen, or within one year after the expiration of such term.

Section 25-4-103, Miss. Code of 1972.

(f) “Contract” means:

- (i) Any agreement to which the government is a party; or
- (ii) Any agreement on behalf of the government which involves the payment of public funds.

(g) “Government” means the state and all political entities thereof, both collectively and separately, including but not limited to:

- (i) Counties;
- (ii) Municipalities;
- (iii) All school districts;
- (iv) All courts; and
- (v) Any department, agency, board, commission, institution, instrumentality, or legislative or administrative body of the state, counties or municipalities created by statute, ordinance or executive order including all units that expend public funds.

(o) “Public funds” means money belonging to the government.

(p) “Public servant” means:

- (i) Any elected or appointed official of the government;
- (ii) Any officer, director, commissioner, supervisor, chief, head, agent or employee of the government or any agency thereof, or of any public entity created by or under the laws of the state of Mississippi or created by an agency or governmental entity thereof, any of which is funded by public funds or which expends, authorizes or recommends the use of public funds; or
- (iii) Any individual who receives a salary, per diem or expenses paid in whole or in part out of funds authorized to be expended by the government.

Section 25-4-105, Miss. Code of 1972.

(2) No public servant shall be interested, directly or indirectly, during the term for which he shall have been chosen, or within one (1) year after the expiration of such term, in any contract with the state, or any district, county, city or town thereof, authorized by any law passed or order made by any board of which he may be or may have been a member.

## II. FACTS

Facts provided by the requestor are set forth below, with identifying information redacted, and are considered a part of this opinion.

I took over my current 16th section land lease in 2008. I have built a new barn, new cross fences, and have steadily made improvements to the land. I cut some hay off of the land and run a 50 head beef cattle farm off of it also. I keep my lease paid on time, and the taxes are paid on time every year. I am wanting to get on the school board to be able to help our school district and help the people of the county know what is going on in our school district.

Question: Can I be on the school board and keep my current 16 section lease?

I know since I took the lease on this land the leases have changed some. There are no more 99 year leases. I have an ag[ricultural] lease which has to be renewed every 5 years now and you cannot transfer an ag[ricultural] lease to someone else; it has to be turned in and completely rebid out. The only way to get a longer lease is to have it used for residential and then it can go up to 30 years. The current lease I have will have to be renewed at the end of 2020. If I win the election in November, the term would be 2019 thru 2024, and my lease would have to be renewed during that time. I could recuse myself from the school board meeting, when any action had to be taken involving my 16th section lease. I am also good with not being able to bid on any new 16th section land, as long as I am in office. I am not trying to get on the school board to take over all of the 16th sections land in [the] County. I know the school board only approves the leases. The 16th section Land Manger and the central office 16th section manger handles everything else that has to do with the 16th section land. Thank you for taking time to review my opinion request.

## III. ANALYSIS

Section 109, Miss. Const. of 1890, and its statutory parallel, Section 25-4-105(2), Miss. Code of 1972, prohibit a member of a public board from having any direct or indirect interest in a contract which is funded or otherwise authorized by that board during his or her term or for one year thereafter. Frazier v. State, ex rel. Pittman, 504 So.2d 675, 693 (Miss. 1987). A contract which violates Section 109 and Section 25-4-105(2) is null and void. Smith v. Dorsey, 530 So.2d 5, 9 (Miss. 1988); Waller v. Moore ex rel. Quitman County Sch. Dist., 604 So.2d 265, 266 (Miss. 1992); Towner v. Moore ex rel. Quitman County School Dist., 604 So.2d 1093, 109 1096 (Miss.

1992). A recusal will *not* prevent or ameliorate a violation of Section 109 and Section 25-4-105(2), as they do *not* require any affirmative act by an individual member but merely action by the board.

A school board member who holds a sixteenth section lease has a direct interest in the lease. If the school board takes any action to reauthorize the lease after the school board member takes office, a violation of Section 109 and Section 25-4-105(2) will occur. If a potential violation of Section 109 and Section 25-4-105(2) arises, the board member's resignation from the school board will not prevent a violation of Section 109 and Section 25-4-105(2) unless the resignation occurs one year before the action by the school board.

However, the facts provided above state that the lease in question must be renewed during the candidate's term of office on the school board. Therefore, the candidate must choose between holding the lease and serving on the school board because he cannot do both. If the candidate is elected to the school board, then he must relinquish the lease when it comes up for renewal.

MISSISSIPPI ETHICS COMMISSION

BY: \_\_\_\_\_  
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